

MacCONAGHY & BARNIER, PLC  
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JEAN BARNIER, State Bar No. 231683  
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645 First Street West, Suite D  
Sonoma, CA 95476  
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Attorneys for Plaintiff,  
Janina M. Hoskins, Trustee in Bankruptcy

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

CARL ALEXANDER WESCOTT and  
MONETTE ROSEMARIE STEPHENS,

Debtors.

JANINA M. HOSKINS, Trustee in  
Bankruptcy of the Estate of Carl Alexander  
Wescott and Monette Rosemarie Stephens,

Plaintiff,

v.

CARL ALEXANDER WESCOTT and  
MONETTE ROSEMARIE STEPHENS,

Defendants.

Case No.: 12-30143 DM  
(Chapter 7)

AP No. 12-3148

**DECLARATION OF JEAN BARNIER  
IN SUPPORT OF TRUSTEE'S  
MOTION FOR DISCOVERY  
SANCTIONS AND ENTRY OF  
DEFAULT PURSUANT TO FRCP 37(d)**

Date: April 26, 2013  
Time: 10:00 a.m.  
San Francisco Courtroom 22 - Montali

I, Jean Barnier, state:

1. I am an attorney admitted to the bar of this court and am counsel of record for Janina Hoskins, Chapter 7 Trustee of this estate.

2. To perform important discovery for the Trustee, I attempted to take the deposition of the Debtor Carl Wescott.

3. On February 16, 2013, pursuant to Civil Local Rule 30-1, I emailed Howard L. Hibbard, Esq., counsel for the Debtor Carl Wescott, to coordinate available dates. My staff

1 followed up with Mr. Hibbard on February 28, 2013. Correct copies of those emails are attached  
2 and labeled Exhibit 1. There was no response. Accordingly on February 28, 2013, my office  
3 caused to be served a Notice of Taking Deposition, unilaterally scheduling the deposition for  
4 March 22, 2013. A correct copy is attached and labeled Exhibit 2.

5 4. On March 19, 2013, Mr. Hibbard emailed me, apologizing for a lack of client  
6 control, informing me that he would be withdrawing and further informing me that it was his  
7 understanding that Mr. Wescott was out of the country. A correct copy of that email is attached  
8 and labeled Exhibit 3.

9 5. As is documented in the Trustee's concurrently filed Motion for Summary  
10 Judgment, Mr. Wescott was not in fact out of the country on March 19, 2013. Instead, on that  
11 date, he showed up at City Storage in San Francisco in an attempt to frustrate the Trustee's  
12 retrieval of the Debtors' financial records.

13 6. Mr. Wescott failed to appear for his deposition on March 22, 2013. A correct copy  
14 of the transcript reflecting that fact is attached and labeled Exhibit 4.

15 I declare under penalty of perjury of the laws of the United States that the foregoing is true  
16 and correct, that I have personal first hand knowledge thereto, and that this declaration is executed  
17 on March 29, 2013, at Newport, Rhode Island.

18  
19 /s/ Jean Barnier  
20 Jean Barnier  
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# EXHIBIT 1

## Jean Barnier

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**From:** Jean Barnier  
**Sent:** Saturday, February 16, 2013 4:15 PM  
**To:** 'Howard Hibbard'  
**Subject:** RE: wescott

Mr. Hibbard,

I would like to schedule the taking of your client's deposition. I am available March 21, 22 or 23. The deposition would be at my offices and begin at 9:30 a.m. Please let me know which date will work and I will notice the deposition.

Of course, if your client executes the stipulation, there will be no need for the taking of his deposition. Thank you for your continuing courtesy in this matter.

*Jean Barnier*

MacConaghy & Barnier, PLC  
645 First St. West, Suite D  
Sonoma, CA 95476  
Telephone: (707) 935-3205  
Facsimile: (707) 935-7051  
[jbarnier@macbarlaw.com](mailto:jbarnier@macbarlaw.com)  
[www.macbarlaw.com](http://www.macbarlaw.com)

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## Shanley Mansour

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**From:** Shanley Mansour  
**Sent:** Thursday, February 28, 2013 11:20 AM  
**To:** 'howard@hlhibbardattorney.com'  
**Cc:** Jean Barnier (JBarnier@macbarlaw.com); gbabcock@macbarlaw.com  
**Subject:** Wescott/12-3148/Deposition

Mr. Hibbard,

I am following up on Ms. Barnier's request to set the date for Mr. Wescott's deposition. Our offices have not heard back from you. Therefore, we will be setting the deposition for Friday, March 22, 2013 at 9:30 a.m. in our offices. Notice will be served.

Shanley Mansour | Paralegal  
MacConaghy & Barnier, PLC  
645 First St. West, Suite D  
Sonoma, CA 95476  
Telephone: (707) 935-3205  
[smansour@macbarlaw.com](mailto:smansour@macbarlaw.com)  
[www.macbarlaw.com](http://www.macbarlaw.com)

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# EXHIBIT 2

Calv

MacCONAGHY & BARNIER, PLC  
JOHN H. MacCONAGHY, SBN 83684  
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Attorneys for Plaintiff,  
JANINA M. HOSKINS

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re

CARL ALEXANDER WESCOTT AND  
MONETTE ROSEMARIE STEPHENS,

Debtors.

Case No.: 12-30143 DM

(Chapter 7)

AP No. 12-03148

**NOTICE OF TAKING DEPOSITION OF  
CARL ALEXANDER WESCOTT**

JANINA M. HOSKINS, TRUSTEE IN  
BANKRUPTCY OF THE ESTATE OF  
CARL ALEXANDER WESCOTT and  
MONETTE ROSEMARIE STEPHENS,

Plaintiff,

v.

CARL ALEXANDER WESCOTT and  
MONETTE ROSEMARIE STEPHENS,

Defendants.

///

1 NOTICE IS HEREBY GIVEN pursuant to the provision of Federal Rules of Bankruptcy  
2 Procedure 9014 and 7030, that Janina M. Hoskins, Chapter 7 Trustee in Bankruptcy of the Estate  
3 of Carl Alexander Wescott and Monette Rosemarie Stephens, will take the deposition of the  
4 Defendant, Carl Alexander Wescott on March 22, 2013 at 9:30 a.m., at the offices of  
5 MacConaghy & Barnier, PLC, 645 First St. West, Suite D, Sonoma, CA 95476.

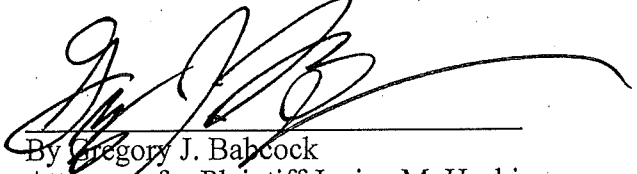
6 Said deposition will be continued, on a reasonable basis, to accommodate calendar  
7 conflicts of counsel and the Deponent.

8 Said deposition will be taken before a duly authorized notary public and will continue  
9 from day to day, weekends and holidays excepted, until completed.

10 You are invited to attend and examine the witness.

11  
12 Dated: February 28, 2013

MacCONAGHY & BARNIER, PLC

13  
14   
15 By Gregory J. Babcock  
16 Attorneys for Plaintiff Janina M. Hoskins,  
17 Trustee in Bankruptcy  
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I served true and correct copies of the **NOTICE OF TAKING DEPOSITION OF CARL ALEXANDER WESCOTT**, by placing said copies in the United States Mail at Sonoma on the date shown below, in a sealed envelope(s) with first-class postage prepaid, addressed to the person(s) below.

Executed at Sonoma, California on February 28, 2013.

  
Shanley Mansour

Howard L. Hibbard  
Law Offices of Howard L. Hibbard  
251 Park Rd. #800  
Burlingame, CA 94010

# EXHIBIT 3

**Jean Barnier**

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**From:** Howard Hibbard [howard@hlhibbardattorney.com]  
**Sent:** Tuesday, March 19, 2013 10:09 AM  
**To:** Jean Barnier  
**Subject:** RE: wescott

Mr. Wescott will be out of the country on the 22nd. I am preparing substitution of attorney to place him in Pro-Per as he is not listening or following my advice. I do apologize for any inconvenience, but I was led to believe he would perform as we had agreed.

**Howard L. Hibbard, Esq.**  
Law Office of Howard L. Hibbard  
251 Park Road, Suite 800  
Burlingame, CA 94010  
Tel: (650) 347-5010  
Fax: (650) 347-5011

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**From:** Jean Barnier [mailto:JBarnier@macbarlaw.com]  
**Sent:** Monday, March 18, 2013 11:32 AM  
**To:** Howard Hibbard  
**Subject:** wescott

Mr. Hibbard,

I have not heard back from you regarding Mr. Wescott's appearance at the deposition set for Friday, March 22. Is Mr. Wescott planning on appearing? Ms. Stephens testified that he is residing in Honduras. Also, can you please tell me when the stipulation regarding Mr. Wescott's discharge will be signed?

Thank you for your cooperation in this matter.

*Jean Barnier*  
MacConaghy & Barnier, PLC  
645 First St. West, Suite D  
Sonoma, CA 95476  
Telephone: (707) 935-3205  
Facsimile: (707) 935-7051  
[jbarnier@macbarlaw.com](mailto:jbarnier@macbarlaw.com)  
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# EXHIBIT 4

***CERTIFIED TRANSCRIPT OF:***

**Janina M. Hoskins vs. Carl Alexander Wescott**

**12-30143 DM CHAPTER 7**

**CARL ALEXANDER WESCOTT - STATEMENT ON RECORD  
Volume 1**

**Job Date: 03/22/2013**

**Reported by: Angela Pourtabib**



**117 Paul Drive, Suite A  
San Rafael, CA 94903-2010**

**Main Office: 415-472-2361 Fax: 415-472-2371  
depos@westcoastreporters.com www.westcoastreporters.com**

<p>1 UNITED STATES BANKRUPTCY COURT 2 NORTHERN DISTRICT OF CALIFORNIA 3 SAN FRANCISCO DIVISION 4 In re Case No.: 12-30143 DM 5 <b>CARL ALEXANDER WESCOTT AND</b> (Chapter 7) 6 <b>MONETTE ROSEMARIE STEPHENS,</b> 7 Debtors, 8 _____/ 9 <b>JANINA M. HOSKINS, TRUSTEE IN</b> 10 <b>BANKRUPTCY OF THE ESTATE OF</b> 11 <b>CARL ALEXANDER WESCOTT and</b> 12 <b>MONETTE ROSEMARIE STEPHENS,</b> 13 Plaintiff, 14 vs. 15 <b>CARL ALEXANDER WESCOTT and</b> 16 <b>MONETTE ROSEMARIE STEPHENS,</b> 17 Defendants. 18 _____/ 19 STATEMENT ON THE RECORD IN LIEU OF 20 DEPOSITION OF 21 <b>CARL ALEXANDER WESCOTT</b> 22 _____ 23 Friday, March 22, 2013 24 NOTICING ATTORNEY: JEAN BARNIER 25 REPORTED BY: ANGELA POURTABIB, CSR NO. 13714 WEST COAST REPORTERS 117 PAUL DRIVE, SUITE A SAN RAFAEL, CALIFORNIA 94903 1 (800) 979-2361 * 1 (415) 472-2361 1</p>	<p style="text-align: right;">Page 3</p> <p>1 Pursuant to Notice of Deposition and on 2 Friday, March 22, 2013, commencing at the hour of 3 9:34 a.m. at the Law Offices of MacConaghy &amp; Barnier, PLC, 4 645 First Street West, Suite D, Sonoma, California, 95476, 5 before me, ANGELA POURTABIB, a Certified Shorthand 6 Reporter and Deposition Officer of the State of 7 California, was to personally appear 8 <b>CARL ALEXANDER WESCOTT,</b> 9 called as a witness by the Plaintiff, who was to have been 10 duly sworn by me, and thereupon examined and testified as 11 hereinafter set forth. 12 -oOo- 13 14 <b>JEAN BARNIER, Attorney at Law, MACCONAGHY &amp;</b> 15 <b>BARNIER, PLC, 645 First Street West, Suite D, Sonoma,</b> 16 <b>California 95476, (707) 935-3205, appeared as counsel on</b> 17 <b>behalf of Plaintiff, Janina M. Hoskins.</b> 18 19 <b>SHEILA GROPPER-NELSON, Attorney at Law, SHEILA</b> 20 <b>GROPPER-NELSON, ATTORNEYS AT LAW, 55 Francisco Street,</b> 21 <b>Suite 600, San Francisco, California 94133, (415)</b> 22 <b>362-2221, appeared telephonically as counsel on behalf</b> 23 <b>of Defendant, Monette Stephens.</b> 24 -oOo- 25</p>
<p style="text-align: right;">Page 2</p> <p>1 INDEX 2 3 STATEMENT BY MS. BARNIER 4 4 5 6 7 8 EXHIBITS 9 (No exhibits were marked for identification.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 STATEMENT BY MS. BARNIER 2 MS. BARNIER: Jean Barnier appearing for the 3 trustee. 4 MS. NELSON: Good morning. Sheila 5 Gropper-Nelson appearing for Monette Stephens. 6 MS. BARNIER: Okay, Sheila. I'm gonna put you 7 back on hold then while we wait. 8 MS. NELSON: That's fine. 9 (Recess taken from 9:34 a.m. - 9:45 a.m.) 10 MS. BARNIER: So we have been -- we convened at 11 9:34; is that correct? 12 THE COURT REPORTER: Yes. 13 MS. BARNIER: And it is now 9:45; is that 14 correct? 15 THE COURT REPORTER: Yes. 16 MS. BARNIER: Mr. Wescott has not appeared. 17 His attorney did advise me that Mr. Wescott was out of 18 the country; however, he did not ask for any other 19 dates, and the deposition was duly noticed and served. 20 So at this time, I am going to stop the 21 deposition and take whatever actions the trustee deems 22 fit. 23 Ms. Gropper-Nelson, do you want to add anything 24 else? 25 MS. NELSON: No, I believe that is the best</p>

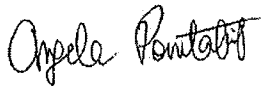
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1 representation of the record.  
 2 THE COURT REPORTER: I couldn't hear what she  
 3 said.  
 4 MS. BARNIER: What she said was, "I believe  
 5 that is the best representation of the record."  
 6 Did I say that correctly?  
 7 MS. NELSON: Yes, you did.  
 8 MS. BARNIER: All right. Thank you so much.  
 9 MS. NELSON: Thank you.  
 10 (Whereupon, at 9:46 a.m., the proceedings  
 11 were concluded.)  
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Page 6

1 CERTIFICATE OF REPORTER  
 2  
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 5 I do hereby certify that the foregoing statement  
 6 was taken at the time and place therein stated, and was  
 7 reported by me, a certified shorthand reporter and a  
 8 disinterested person, and was under my supervision  
 9 thereafter transcribed into typewriting.  
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13 Executed March 26, 2013, at Novato, California.

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17 Angela Pourtabib, CSR No. 13714  
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